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NATIONAL SECURITY COUNCIL
WASHINGTON, D.C. 20504

Betsy
8774
REDO

December 15, 1999

ACTION

MEMORANDUM FOR SAMUEL R. BERGER

FROM: HANS BINNENDIJK *HB*
SUBJECT: "Don't Ask, Don't Tell"

Per our conversation this afternoon, attached is the revised memo for the President on "Don't Ask, Don't Tell."

Concurrences by: Jamie Baker, Miles Lackey
in draft *in previous versions*

RECOMMENDATION

That you sign the memorandum for the President at Tab I.

Approve _____ Disapprove _____

Attachment

Tab I Information Memorandum for the President

THE WHITE HOUSE

WASHINGTON

INFORMATION

MEMORANDUM FOR THE PRESIDENT

FROM: SAMUEL R. BERGER

SUBJECT: Problems with "Don't Ask, Don't Tell"

You asked for an assessment of the "don't ask, don't tell" policy for gays in the military. The assessment below concludes that: 1) there have been negative trends in policy implementation, 2) OSD is trying to improve the situation, overcoming resistance from the Services, and 3) there are steps available to improve the situation further, but they may reignite negative congressional reaction.

BACKGROUND

Several interrelated trends capture the nature of the current problem. The number of annual discharges for homosexual conduct has doubled since 1994, growing consistently from 617 in that year to 1149 last year. The vast majority of these discharges (82%) were triggered by a personal "statement" admitting to homosexuality. Fifty-eight percent of the discharges were within the member's first year of service.

Servicemembers' Legal Defense Network (SLDN) data (which may not be completely reliable) indicates that incidents of anti-gay harassment have doubled since 1997. Last year they documented 400 cases that included death threats and verbal abuse. The Fort Campbell murder, they argue, must be seen in the context of this broader environment of harassment. SLDN also believes that "commands use heavy-handed tactics to pursue gays" in violation of the "don't ask, don't pursue" elements of the policy. SLDN reports that incidents of "asking and pursuing" were up 42% between 1997 and 1998. They also conclude that while reports of threats to extract confessions are up, physical abuse by investigators has declined.

There appear to be several reasons for these negative trends. Under legislation passed in 1993, service members with a propensity or intention to engage in homosexual acts "create an

unacceptable risk" and must be separated from the Armed Forces. At the same time, the "don't ask, don't tell" policy stresses privacy rights. This has posed contradictions for those tasked with implementing the policy and for those trying to live with it. It is clear that the culture of the military leans in the direction of the law banning gays. While most service members receive some training on the policy, it appears inadequate. Therefore, the "don't ask, don't tell" policy may give homosexuals a false sense of security about joining a culture that may not meet expectations.

OSD EFFORTS TO IMPLEMENT THE POLICY

Bill Cohen and OSD appear to be making a good faith effort to implement the policy, but must overcome implementation problems in the Services. In March 1997, OSD issued a memorandum from Undersecretary Dorn, which made it clear that if a service member reports that he/she is being threatened because of a perception of being homosexual, that report shall not, by itself, cause the service member to be investigated for homosexuality. The report of such a threat should result in the prompt investigation of only the threat itself.

An April 1998 OSD review pointed out that the "don't ask, don't tell" policy posed an implementation challenge to the Services. The review found that although for the most part the policy has been properly applied, there is cause for concern about some aspects of policy implementation. It recommended several steps to enhance implementation.

On August 13, 1999, OSD issued new policy guidelines based on the 1998 review. The new guidelines strengthened and reissued the 1997 Dorn memorandum, and called for its wide distribution and for training on its content. In addition, the 1999 guidelines recommended that: 1) staff judge advocates consult with senior legal officers at higher headquarters before initiating investigations of an allegedly homosexual member, 2) prior authorization be sought at the Service Secretary level before initiating any investigation that might deprive a discharged member of financial benefits, and 3) Service Inspectors General (IG's) inspect the training of those charged with enforcing the policy. The Services are currently developing implementation plans for these August guidelines, so their impact has not yet been felt. OSD reports that the Army plan is acceptable but the other plans need to be revised.

OSD has also made a major effort at Lackland Air Force Base to reduce the number of recruits declaring themselves to be

homosexuals. By initiating a "cooling off" period, they have significantly reduced the number of discharges during basic training.

This week in an important step, Bill directed the DOD IG to assess the environment with respect to application of the "don't ask, don't tell" policy at representative installations within each of the military departments. The IG's assessment will address the extent to which service members are subject to harassment based on alleged homosexuality, and the extent to which disparaging speech or expression relating to sexual orientation is tolerated. Bill asked the IG to report back to him in 90 days; the report will serve as a useful basis for considering next steps.

CONGRESSIONAL CONSIDERATIONS

Efforts to strengthen the "don't ask, don't tell" policy could prove extremely controversial, particularly with the Services and opponents of the policy on the Hill. Too bold a step might reignite legislative proposals that could undermine our existing policy and spill over into other defense issues. In a December 15 *Washington Times* article, Senator John Warner is reported to have said, "The wise and fair course for future congressional action, particularly in view of the profound impact of these issues on military readiness, is not to take legislative action in the heated rhetoric of an election year."

POSSIBLE NEXT STEPS

Short of changing the "don't ask, don't tell" policy, there are several steps that might be taken to strengthen existing policy, including the following:

- Ensure prompt and complete Service implementation of the August 1999 guidelines.
- Conduct more vigorous anti-harassment training since current training appears inadequate.
- Take appropriate additional steps to hold commanders accountable for inappropriately "asking or pursuing" and for condoning an environment conducive to harassment.
- Pursue a broader definition of the service member communications for which confidentiality is protected.
- Ensure that there is appropriate recourse to accused service members to stop improper investigations by their commanders.
- A White House/OSD working group might be established to monitor implementation of the August guidelines, discuss implementing the above steps and consider other alternatives after release of the IG report.

DRAFT

Possible Steps to Improve Implementation of Don't Ask/Don't Tell

Prohibiting Harassment of Service Members. In August 1999, DOD released a memorandum to the services reiterating the Pentagon's policy prohibiting threats or harassment on the basis of alleged homosexuality. The services are to disseminate this guidance to all levels of command and incorporate it into training. Only the Navy has disseminated guidance. The other services should do so as soon as possible.

More Effective Enforcement of the "Don't Ask" Prohibition. One straightforward step that can be taken is for the services to issue guidance to commanding officers reiterating this policy and for commanding officers at each base to make clear the importance of this requirement.

Another effective way to communicate the importance of this policy is to ensure that persons who violate it are held accountable. The record in the Winchell case suggests that there may have been violations of the existing bar on commanding officers asking about sexual orientation. Ft. Campbell has announced that, at the conclusion of the court martial proceedings arising out of the Winchell murder, it will initiate an inquiry regarding compliance with all aspects of the policy, including the bar on these inquiries. Although an investigation of any person must be conducted free of any command influence by the White House, DOD, or military commanders, DOD can conduct additional inquiries where appropriate to more effectively enforce this aspect of the policy.

Pre-trial Agreements. Existing DOD policy is unclear as to when pre-trial agreements in court martial proceedings can be contingent on one service member providing information about the consensual sexual conduct of other service members. There have been discussions within DOD about clarifying the policy to make clear that such agreements should not be contingent on providing such information unless the conduct of the other service member constitutes conduct that warrants a criminal investigation.

Protecting the Confidentiality of Communications. The "Don't Tell" prohibition in the statute does not define prohibited statements. However, the intent of the policy was to protect the confidentiality of service members' sexual orientation but to bar openly gay men and women from remaining in the military. Consequently, there should be sufficient flexibility in the implementation of the policy to recognize a category of confidential statements regarding sexual orientation that do not violate the "Don't Tell" prohibition. For example, these would include confidential statements to counselors and chaplains, etc. DOD has considered expanding confidentiality protections and we can work with them to do so.

Rebutting the Presumption of Homosexual Conduct. The statute provides a service member is separated if he or she makes a statement that he or she is a homosexual and fails to demonstrate "that he or she is not a person who engages in, attempts to engage in, has a propensity to engage in, or intends to engage in homosexual acts." Consequently, a service member should be given a reasonable opportunity to make this demonstration. For example, if there is no evidence that a service member has engaged in conduct, an affidavit regarding the intent not to engage in conduct in the future should be sufficient. The infrequency with which this rebuttal provision has been used suggests that DOD needs implement this aspect of the policy in a more flexible way.

NATIONAL SECURITY COUNCIL
WASHINGTON, D.C. 20504

8774

December 13, 1999

ACTION

MEMORANDUM FOR SAMUEL BERGER

FROM: HANS BINNENDIJK *original*

SUBJECT: Problems with "Don't Ask, Don't Tell"

You asked that we convert our memo on "don't ask, don't tell" to a memo for the President, and that we strengthen the section on downsides of reopening the issue. The converted memorandum for your signature to the President is at Tab I. Our original memorandum is at Tab II.

Laura Marcus asked that John Podesta have an opportunity to review the memo before it is submitted to the President. Eddie Correia from White House Counsel's office has also asked for a copy of the draft. Both Chief of Staff and White House Counsel were very much involved in initial development of Don't Ask, Don't tell, and a follow-up on implementation problem/issues. I would like to share a copy of this memo with them as I expect we may be working with them closely on the issue over the coming months.

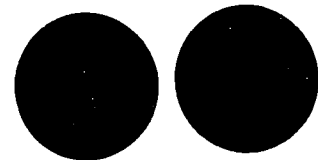
Concurrence: Mary DeRosa, Miles Lackey *in draft*

RECOMMENDATION

That you sign the attached memorandum at Tab I after consulting with Podesta.

Attachments

Tab I Information Memorandum for the President
Tab II Previous Correspondence



→ HANS

Since original memo was done six weeks ago, before current controversies, think we need to focus more on what DDP has just done. See notes @

THE WHITE HOUSE
WASHINGTON

INFORMATION

MEMORANDUM FOR THE PRESIDENT

FROM: SAMUEL R. BERGER

SUBJECT: Problems with "Don't Ask, Don't Tell"

an assessment
You asked for a ~~review~~ of the "don't ask, don't tell" policy for gays in the military. The assessment below concludes that:

have been (1) there ~~are~~ negative trends in policy implementation; (2) OSD is trying to improve the situation, ~~but meets~~ resistance from the Services; (3) there are steps available to improve the situation further, but they may reignite negative congressional reaction. *overcoming*

THERE IS A PROBLEM

Three interrelated trends capture the nature of the current problem.

- The number of annual discharges for homosexual conduct has doubled since 1994, growing consistently from 617 in that year to 1149 last year. The vast majority of these discharges (82 percent) were triggered by a personal "statement" admitting to homosexuality. Fifty-eight percent of the discharges were within the member's first year of service.
- SLDN (Servicemembers' Legal Defense Network) data (which may not be completely reliable) indicates that incidents of anti-gay harassment have doubled since 1997. Last year they documented 400 cases that included death threats and verbal abuse. The Fort Campbell murder, they argue, must be seen in the context of this broader environment of harassment.
- SLDN also believes that "commands use heavy-handed tactics to pursue gays" in violation of the "don't ask, don't pursue" elements of the policy. SLDN reports that incidents of "asking and pursuing" were up 42 percent between 1997 and 1998.

SLDN further concludes that while reports of threats to extract confessions are up, physical abuse by investigators has declined.

REASONS BEHINDS THESE TRENDS

There appear to be several reasons for these negative trends.

- Under legislation passed in 1993, Servicemembers with a propensity or intention to engage in homosexual acts "create an unacceptable risk" and must be separated from the Armed Forces. The "don't ask, don't tell" policy, however, stresses privacy rights. This has posed contradictions for those tasked with implementing the policy and for those trying to live with it.
- An April 1998 OSD review concluded that this contradiction has posed a challenge to the Services, but that for the most part the policy has been properly enforced. However, constrained personal privacy for all members and a cultural emphasis on regulations leave commanders leaning in the direction of the law banning gays.
- And yet the "don't ask, don't tell" policy tends to lead some gays to join a culture that does not meet their expectations.
- A recent policy shift at Lackland Air Force Base supports the belief that some statements admitting to homosexual preferences may be designed as a short-term escape from unpleasant basic training. A "cooling off" period has been instigated during which a recruit has an opportunity to consult legal counsel and retract a privately made statement. Gay-related discharges of Lackland recruits has dropped dramatically.

How good has the training of officers and NCO's been?

OSD EFFORTS TO IMPLEMENT THE POLICY

Bill Cohen and

OSD appears to be making a good faith effort to implement the policy, but ~~an implementation~~ problem remains in the Services.

must overcome implementation

- In 1997, OSD issued the Dorn memorandum, which stated that a report of harassment by a possibly gay member is not a cause for the commanding officer to investigate the person being harassed. It also ordered prompt investigation of harassment charges made by possibly gay members and ordered training to prevent harassment.

or "of"

how sweeping?

- In April 1998, OSD reviewed the "don't ask, don't tell" policy and recommended several improvements, including consultations with higher level commands before investigations begin and improved training for those enforcing the policy.
- In August 1999, OSD issued a new policy directive implementing many of the recommendations of the 1998 review and reissuing the Dorn memorandum. The Services are currently developing implementation plans for this directive, but OSD is concerned about Service compliance.

*Amplify
on
new
directive*

OTHER STEPS SUGGESTED BY RIGHTS ADVOCATES

SLDN and others who seek to strengthen the current policy have made a series of suggestions, which include the following:

- Increase training of Servicemembers on the policy, on harassment, and on the limits of gay investigations.
- Take additional steps to hold accountable those who inappropriately ask, pursue, or harass.
- Make commanders accountable for an environment in which harassment appears acceptable.
- Provide recourse to accused Servicemembers to stop improper investigations by their commanders.
- Adopt a rule of privacy for confidential conversations.
- Exclude evidence obtained illegally or inappropriately from use in administrative discharge boards.

*Is this not
now being
done?*

A PRICE FOR FURTHER ACTION

An effort to strengthen the "don't ask, don't tell" policy by pursuing some or all of the above suggestions could prove extremely controversial, particularly with the Services and opponents of the policy on the Hill. Too bold a step might reignite legislative proposals that could undermine our existing policy and spill over into other defense issues. In addition, our policy has not yet felt the positive impact of OSD's recent directives. If you wish to pursue any of the steps suggested by the rights activists, a small task force might review each idea.

*Should
this be
rephrased
to suggest
we wait
until OSD's
new
directive
is implemented?
Or doesn't
it go far enough?*

Pimentel, Betsy J. (DEFENSE)

From: Pimentel, Betsy J. (DEFENSE)
Sent: Tuesday, December 14, 1999 6:49 PM
To: Binnendijk, Johannes A. (Hans) (DEFENSE); @DEFENSE - Defense Policy
Subject: Readout from 4pm "Don't Ask, Don't Tell Meeting [UNCLASSIFIED]"

Importance: High

- I attended today's 4pm session on Don't Ask, Don't Tell for our directorate. Since this issue is a "group" project, I wanted to give you all the benefit of a readout.
- Other Attendees: Elizabeth (Julian) Potter from Public Liaison; Eddie Correia and _____ Jackson from The WH Counsel's office; Laura Marcus from the COS office; and Mary DeRosa from Legal
- Julian Potter has been fielding the concerns from the gay and lesbian advocates that the DOD IG investigation won't get a clear picture of the issue and that waiting 90 days to take action is too long.
- Lots of discussion about what the White House can realistically do to move forward. Although a "new" policy was discussed, all agreed that is a bridge too far.
- Steps that do seem possible include:
 1. Push DOD to disseminate the anti-harassment guidance Secretary Cohen promised in his August memo
 2. Push for DOD to the training materials promised to the field.
 3. Pursue a broader definition of the confidentiality protection (no requirement for a change in policy; would add medical personnel, clergy and private conversations to those protected from "Don't Tell")
- No decisions on steps. Eddie Correia took the action to formalize the list and try to prioritize for internal review.
- Group agreed we should get feedback from the memo going to SRB before we would meet with DOD.
- After drafting the list, Eddie would also like to meet with you (Hans) before we would consider a meeting with DOD.

Questions are welcome.

NATIONAL SECURITY COUNCIL
WASHINGTON, D.C. 20504

HANS
8774
REDO

December 15, 1999

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POSSIBLE NEXT STEPS

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Conduct Unbecoming

THE SIXTH ANNUAL REPORT ON
"DON'T ASK, DON'T TELL,
DON'T PURSUE, DON'T HARASS"

by

Stacey L. Sobel

Kathi S. Westcott

Michelle M. Benecke

C. Dixon Osburn

with

Jeffery M. Cleghorn

Servicemembers Legal Defense Network

Embargoed for Release

March 9, 2000 • 7:00 a.m. E.T.

To: Binnendijk, Johannes A. (Hans) (DEFENSE)
Cc: Pimentel, Betsy J. (DEFENSE)
Subject: Review of DADT recommendations

Hans- Here is my analysis of the current DADT recommendations in the context of my memo of Jan 19.

- ***NSC: Ensure prompt and complete Service implementation of the August 1999 guidelines. & Conduct more vigorous anti-harassment training since current training appears inadequate.***

Eddie: Prohibit harassment of service members.

The Services have completed their anti-harassment plans which include a robust training program. The tone and focus of the training programs will be critical to success. If presented in the context of "here's a training program on what you can and can't say/do about homosexuals in the military", it will never work. The training should generally focus on how the diverse military workforce must respect each other and work together to reach common goals. The training should avoid highlighting homosexuals but include a unit on the DADT policy, explaining how both straight and homosexual members must behave in order to stay in compliance. Both sides of the issue must understand they are responsible to make it work.

- ***NSC: Take appropriate steps to hold commanders accountable for inappropriately "asking or pursuing" and for condoning an environment conducive to harassment.***

Eddie: More effective enforcement of the "Don't Ask" provision.

Taking a scapegoat to General Court Martial will only provide a martyr to the conservative right. The goal is to change the thinking of the conservative military culture. All leaders, officers and enlisted, receive evaluation reports; Services could require specific comments in these reports on the individuals contribution to a positive command climate (not just DADT). A bad evaluation will affect promotion and retention - a way to weed out those that don't comply with policy. We won't be able to measure the affect of this initiative, but it will have a great long-term impact on changing the conservative culture. A person either complies or is out.

We should consider now what DOD will do with the results of the IG investigations. If the reports show problems, the SLDN will call for immediate action and the conservatives will attack the results. If they don't show problems, the SLDN will claim a whitewash and the conservatives will use the results to block improvements. The first DOD meeting should consider a plan to release the results soon after they are completed and be prepared with options for response. (Remember it took DOD over a year to release their last review of the DADT policy implementation.) The response should focus on improving command climates across the board and not just on the DADT climate.

- ***NSC & Eddie: Pursue a broader definition of the Service member communications for which confidentiality is protected.***

Not as easy as it sounds. Military personnel relinquish some of their personnel privacy rights in the interest of military integrity. For example, military members in contact with nuclear weapons must participate in the Personnel Reliability Program. This program insures those with access to nuclear weapons are both physically and mentally safe to carry out their missions. Care-givers are required to report *any* condition, including stress and anxiety, that would have an influence on a person's judgement. We want a nuclear commander to know if a subordinate is stressed out over a sexual identity crisis. In general, military leaders need to know if their people are ready for action, which includes mental readiness. This recommendation could be implemented, but with very stringent parameters.

- **Eddie: Limit pre-trial agreements. Agree.**
- **Eddie: Make it easier to rebut the presumption of homosexual conduct.**
Eddie would like to make it easier for a member to prove he/she hasn't engaged in homosexual conduct. This will be almost impossible to achieve because it comes down to a definition of words. The statute requires a member be discharged for "...a propensity to engage in...homosexual acts." Websters Dictionary says a homosexual is one who has "sexual desire for others of one's own sex." If a person declares they are a homosexual, by definition they are admitting sexual desire for others of the same sex; in other words, a propensity. There may be some fine shades of meaning here, but the common military member won't see it. I don't think there is any way to implement this within the current law.
- **NSC: Ensure there is appropriate recourse to accused service members to stop improper investigations by their commanders.**
Technically, an avenue of recourse exists. Note Article 138 of the Uniform Code of Military Justice:
"Any member of the armed forces who believes himself wronged by his commanding officer, and who, upon due application to that commanding officer, is refused redress, may complain to any superior commissioned officer, who shall forward the complaint to the office exercising court-martial jurisdiction over the officer against whom it is made. The officer exercising general court-martial jurisdiction shall examine into the complaint and take proper measures for redressing the wrong complained of; and he shall, as soon as possible, send to the Secretary concerned a true statement of that complaint, with the proceedings thereon."
This section of the UCMJ could be used by anyone who feels wronged in an investigation and wants to have an impact on his/her commanding officer. The beauty of this course of action is that the incident is brought to the attention of a general officer, who should know the nuances of the DADT policy, and is eventually brought to the attention of the Secretary for further oversight.
In reality, I've never seen this Article used but this may be a situation where it could be effective.

Brian Peterman
Defense Directorate
X69188

938. ART. 138. COMPLAINTS OF WRONGS

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Peterman, David (Brian) (DEFENSE)

From: Peterman, David (Brian) (DEFENSE)
Sent: Wednesday, January 26, 2000 8:57 AM
To: Binnendijk, Johannes A. (Hans) (DEFENSE)
Cc: Pimentel, Betsy J. (DEFENSE)
Subject: Review of DADT recommendations [UNCLASSIFIED]

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Eddie: More effective enforcement of the "Don't Ask" provision.

Taking a scapegoat to General Court Martial will only provide a martyr for the conservative right. The goal is to change the thinking of the conservative military culture. All leaders, officers and enlisted, receive evaluation reports; Services could require specific comments in these reports on the individuals contribution to a positive command climate (not just DADT). A bad evaluation will affect promotion and retention - a way to weed out those that don't comply with policy. We won't be able to easily measure the affect of this initiative, but it will have a great long-term impact on changing the conservative culture. A person either complies or is out.

We should consider now what DOD will do with the results of the IG investigations. If the reports show problems, the SLDN will call for immediate action and the conservatives will attack the results. If they don't show problems, the SLDN will claim a whitewash and the conservatives will use the results to block improvements. The first DOD meeting should consider a plan to release the results soon after they are completed and be prepared with options for response. (Remember it took DOD over a year to release their last review of the DADT policy implementation.) The response should focus on improving command climates across the board and not just on the DADT climate.

- ***NSC & Eddie: Pursue a broader definition of the Service member communications for which confidentiality is protected.***

Not as easy as it sounds. Military personnel relinquish some of their personnel privacy rights in the interest of military integrity. For example, military members in contact with nuclear weapons must participate in the Personnel Reliability Program. This program insures those with access to nuclear weapons are both physically and mentally safe to have access to WMD. Care-givers are required to report *any* condition, including stress and anxiety, that would have an influence on a person's judgement. We want a nuclear commander to know if a subordinate is stressed out over a sexual identity crisis. In general, military leaders need to know if their people are ready for action, which includes mental readiness. This recommendation could be implemented, but within very stringent

parameters.

- **Eddie: Limit pre-trial agreements. Agree.**
- **Eddie: Make it easier to rebut the presumption of homosexual conduct.**
Eddie would like to make it easier for a member to prove he/she hasn't engaged in homosexual conduct. This will be almost impossible to achieve because it comes down to semantics. The statute requires a member be discharged for "...a propensity to engage in...homosexual acts." Webster's Dictionary says a homosexual is one who has "sexual desire for others of one's own sex." If a person declares they are a homosexual, by definition they are admitting sexual desire for others of the same sex; in other words, a propensity. There may be some fine shades of meaning here, but the common military member won't see it. I don't think there is any way to implement this within the current law.
- **NSC: Ensure there is appropriate recourse to accused service members to stop improper investigations by their commanders.**
Technically, an avenue of recourse exists. Note Article 138 of the Uniform Code of Military Justice:
"Any member of the armed forces who believes himself wronged by his commanding officer, and who, upon due application to that commanding officer, is refused redress, may complain to any superior commissioned officer, who shall forward the complaint to the office exercising court-martial jurisdiction over the officer against whom it is made. The officer exercising general court-martial jurisdiction shall examine into the complaint and take proper measures for redressing the wrong complained of; and he shall, as soon as possible, send to the Secretary concerned a true statement of that complaint, with the proceedings thereon."
This section of the UCMJ could be used by anyone who feels wronged in an investigation and wants to have an impact on his/her commanding officer. The beauty of this course of action is that the incident is brought to the attention of a general officer who should know the nuances of the DADT policy, and the complaint is eventually brought to the attention of the Secretary for further oversight. In reality, I've never seen this Article used but this may be a situation where it could be effective.

Brian Peterman
Defense Directorate
X69188

Commentary on EOP Recommendations for Improving DOD Implementation

- *NSC: Ensure prompt and complete Service implementation of the August 1999 guidelines. & Conduct more vigorous anti-harassment training since current training appears inadequate. Eddie: Prohibit harassment of service members.*

Secretary Cohen and his staff have reviewed and approved the individual Services' DADT and anti-harassment training plans which are now being implemented. All of the plans provide detailed explanations of the DADT policy and their application. The Army and Air Force plans are the most robust, explaining why harassment of any individual is counter to their core values. The Navy and Marine Corps plans are more mechanical and do not contain strong statements of support from the most senior leadership. All are a step toward implementing our recommendations.

Strong statement regarding anti-harassment

- *NSC: Take appropriate steps to hold commanders accountable for inappropriately "asking or pursuing" and for condoning an environment conducive to harassment. Eddie: More effective enforcement of the "Don't Ask" provision.*

This follows the robust training requirement very well. The goal is to change the thinking of the conservative military culture. Holding service members accountable for complying with the policy is the next logical step. All leaders, officers and enlisted, receive evaluation reports. Services could require specific comments in these reports on the individual's contribution to a positive command climate (not just DADT). A bad evaluation will affect promotion and retention - a way to weed out those that don't comply with policy. We won't be able to easily measure the affect of this initiative, but it will have a great long-term impact on changing the conservative culture. A person either complies or is eventually out.

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- *NSC & Eddie: Pursue a broader definition of the Service member communications for which confidentiality is protected.*

This can be done, but DOD will want to do it under very controlled conditions. Military personnel relinquish some of their personnel privacy rights in the interest of military integrity. For example, military members in contact with nuclear weapons must participate in the Personnel Reliability Program. This program insures those with access to nuclear weapons are both physically and mentally safe to have access to WMD. Care-givers are required to report *any* condition, including stress and anxiety, that would have an influence on a person's judgement.

Working papers which have not been cleared.

Security clearance procedures also investigate whether or not an individual is vulnerable to blackmail. In a military environment where admitting one's homosexuality could end one's career, the vulnerability may be especially high. This must be considered in dealing with clearances. While security clearance procedures and homosexual conduct may not be in conflict in the civilian world, the DADT policy may complicate it in the military world.

The DADT policy puts great stress on homosexuals – they are forced to stay “in the closet” and prohibited from acting on some basic human desires. It is important they have someone to talk with but we also must be sensitive to the needs of critical military security and effectiveness concerns. The Army training says, “Information provided to a chaplain or a legal assistance attorney is generally considered privileged and will not be disclosed unless the soldier approves of the disclosure.” This privileged communication status might also be expanded to medical care givers and family service providers under certain conditions. DADT policy training should be provided to all people that might have authority to receive privileged communications.

- *Eddie: Limit pre-trial agreements. Agree.*
- *Eddie: Make it easier to rebut the presumption of homosexual conduct.*

The lawyers will need to hash this out in the context of the law.

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